IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WRS, INC. d/b/a WRS MOTION PICTURE LABORATORIES, a corporation,

Plaintiff,

No. 2:00-CV-2041-AJS

vs.

PLAZA ENTERTAINMENT, INC., a corporation, ERIC PARKINSON, an individual, CHARLES von BERNUTH, an individual, AND JOHN HERKLOTZ, an individual,

Defendants,

WRS, INC'S RESPONSE TO MOTION FOR RECONSIDERATION OR FOR RELIEF FROM JUDGMENT

AND NOW comes, WRS, Inc., by and through its counsel, Thomas E. Reilly, with the following Response to the Motion for Reconsideration or Relief from Judgment filed by Defendant, Charles von Bernuth:

INTRODUCTION

1. The Motion filed by Charles von Bernuth (hereinafter referred to as "von Bernuth") fails to set forth a basis upon which relief under Rule 60(b)(6) can be granted since the Motion fails to aver any facts upon which the Court could base an understanding that von Bernuth has a meritorious defense to the claim of WRS.

2. The Motion filed by von Bernuth fails to set forth a basis upon which the requested relief can be granted because it avers that von Bernuth allegedly first learned of the entry of the Default Judgment on May 21, 2007, but waited until October 16, 2007 to file the Motion. In light of the averred exceptional circumstances alleged and absent any

explanation for the delay, von Bernuth has failed to present his Motion within a reasonable time as required by. F.R.C.P. 60(b)(6).

3. The Motion fails to set forth a basis upon which the requested relief can be granted because the Motion fails to alleged that WRS will not be prejudiced in the event that the default judgment is removed and, in fact, because of the passage of time; the closing of the business of WRS; its eviction from its facility; and the fact that all of the principal employees with knowledge of the specific events that occurred over the course of the relationship between WRS and Plaza and von Bernuth, except for Jack Napor and his wife, Louise Napor, have all moved on and are no longer employed by WRS, WRS submits that it will be prejudiced if the judgment is opened.

RESPONSE

1. Admitted in part and denied in part. WRS admits that on December 22, 2000 at Docket No. 13 in the within action Attorney John Gibson (hereinafter referred to as “Gibson”) filed an Answer and Affirmative Defenses on behalf of Defendant, Charles von Bernuth (hereinafter referred to as “von Bernuth”). WRS admits that Gibson also filed an Answer, Affirmative Defenses, and Counterclaim at Docket No. 03-1393 on October 29, 2003. All counterclaims against WRS were finally determined by the confirmation of WRS’ Chapter 11 Reorganization Plan in the Bankruptcy Court for the Western District of Pennsylvania of June 23, 2005 at Case No. 01-28759-MBM, Document No. 577. WRS specifically denies the statements made by Gibson in the Affidavit referred to in Paragraph 1 since after reasonable investigation WRS is unable to determine the truth of the averments contained therein regarding Gibson’s contact with

von Bernuth and the motivations for his action or inaction in the within matter. Said statements are, therefore, denied.

2. Denied. The averments contained in Paragraph 2 are denied because WRS after reasonable investigation is unable to determine the truth of the averments contained in Paragraph 2 as they relate to Gibson's contact with von Bernuth. However, to the extent that Gibson suggests that von Bernuth "faithfully paid Mr. Gibson for his services", presumably since Gibson was billing on an hourly basis, he sent bills to von Bernuth, which demonstrated the work that Mr. Gibson was performing on his behalf. WRS submits that von Bernuth was apprised of Mr. Gibson's actions and acquiesced to Gibson's treatment of his defense.

3. Denied. After reasonable investigation, WRS is unable to determine the truth of the averments contained in Paragraph 3. Said averments are, therefore, denied. To the extent that von Bernuth was satisfied with a lack of communication from Gibson and acquiesced to the lack of communication from his chosen counsel, von Bernuth is bound by his choice of counsel and the actions and choices made by Gibson on von Bernuth's behalf.

4. Admitted.

5. Admitted.

6. Admitted in part and denied in part. WRS admits that the status conference occurred on March 9, 2006 as averred and that Summary Judgments for the parties who chose to file them were to be filed on or before March 23, 2006. WRS admits that the Court suggested that the parties could retain an accountant, subsequently determined to be Schneider Downs, to review WRS' records because of the Defendants'

contention that the records did not accurately reflect the amounts owed by the Defendants. After discussion, von Bernuth, WRS, and Herklotz, entered into a Stipulation providing for the retention of the accountant. Said Stipulation is at Docket No. 86 and the Order entered thereon is at Docket No. 87. To the best of WRS' counsel's information, Gibson had authority from von Bernuth to enter into the Stipulation at the time he signed it.

7. Admitted in part and denied in part. After reasonable investigation, WRS, Inc. believes that Gibson did inform von Bernuth of the Stipulation and that payment that would be required. After reasonable investigation, WRS is unable to determine the truth of the remaining averments contained in Paragraph 7. However, it is counsel for WRS' recollection that Gibson indicated that von Bernuth had chosen not to pay his share of the accountant's fees as provided in the Stipulation.

8. Denied. After reasonable investigation, WRS is unable to determine the truth of the averments contained in Paragraph 8. Said averments are, therefore, denied.

9. Denied. After reasonable investigation, WRS is unable to determine the truth of the averments contained in Paragraph 9. Said averments are, therefore, denied. However, it is the recollection of WRS' counsel that Gibson advised that von Bernuth had chosen not to pay the accountant's fee.

10. Denied. After reasonable investigation, WRS is unable to determine the truth of the averments contained in Paragraph 10. Said averments are, therefore, denied.

11. Admitted in part and denied in part. WRS, in fact, filed a Motion for Summary Judgment as to Charles von Bernuth at Docket Nos. 88, 89 and 90. It was only after no responsive pleading or other summary judgment was filed on behalf of von

Bernuth and after Gibson reported that von Bernuth would not contribute to the retention of the accountant per the Stipulation that WRS moved for the entry of Judgment for the failure of von Bernuth to prosecute the action further.

12. Denied. After reasonable investigation, WRS is unable to determine the truth of the averments contained in Paragraph 12. Said averments are, therefore, denied.

13. Admitted.

14. Denied. After reasonable investigation, WRS is unable to determine the truth of the averments contained in Paragraph 14. Said averment is, therefore, denied.

15. Admitted.

16. Denied. The averments contained in Paragraph 16 regarding the allegations of gross neglect of professional obligations are specifically denied since WRS is unable form a belief as to the facts that allegedly support that allegation. After reasonable investigation, WRS is unable to determine the truth of the remaining averments contained in Paragraph 16 regarding Gibson's contact or lack thereof with von Bernuth. Said averments are, therefore, denied. Furthermore, to the extent that von Bernuth acquiesced in the lack of communication with Gibson, he chose Gibson as his counsel. Von Bernuth is bound by the choices made by his counsel as to his defense.

17. Admitted.

18. Denied. WRS specifically denies the allegation pertaining to the gross dereliction of duties by Gibson since that allegation is premised upon facts that WRS denies. WRS denies the remaining averments contained in Paragraph 18 regarding Gibson's notification or lack of notification to von Bernuth because after reasonable investigation WRS is unable to determine the truth thereof.

19. Admitted.

20. Denied. After reasonable investigation WRS is unable to determine the truth of the averments contained in Paragraph 20 as they pertain to Gibson's notification of von Bernuth pertaining to the judgment or the truth of the allegations set forth or statements contained in von Bernuth's Affidavit. Said statements are, therefore, denied. WRS is unable after reasonable investigation to determine whether Gibson's actions were either surprising or not surprising as alleged. Said averment is denied. It is admitted that von Bernuth did not move previously to reconsider the judgment, open the default judgment, and did not take an appeal from the judgment. WRS is unable to determine the truth of the averments contained in Paragraph 20 as to whether Gibson did nothing since it is possible that he refrained from doing each of the items suggested above after consultation with von Bernuth.

21. Admitted in part and denied in part. WRS has no independent knowledge of the email to which Paragraph 21 refers. However, based upon its review of email, WRS admits that Parkinson, who was also represented by Gibson, sent the email referred to in Paragraph 21. Furthermore, after reasonable investigation, WRS is unable to determine the truth of the averments or suggestion contained in the Motion that Parkinson was unaware of the appeal and specifically denies the same.

22. Admitted in part. Denied in part. WRS admits that the email states that Judgment had been entered. After reasonable investigation, WRS is unable to form a belief that this was the first time Parkinson learned of the Judgment.

23. Denied. WRS denies the characterization of Gibson's conduct contained in Paragraph 23. WRS admits that the content of the email speaks for itself.

24. Denied. The averments contained in Paragraph 24 are specifically denied by WRS to the extent that they refer to Gibson's "inexcusable dereliction in his duty to defend his clients" since said averment is based upon facts which WRS denies. After reasonable investigation, WRS is unable to determine the truth of the remaining averments contained in Paragraph 24. Said averments are, therefore, denied.

25. Admitted in part and denied in part. WRS has no knowledge of how von Bernuth paid Gibson. However, to the extent that Gibson was billing hourly for his services, presumably Gibson sent von Bernuth bills containing an expression of how much work he did and what services he performed and, to the extent that von Bernuth faithfully paid those invoices, von Bernuth was apprised by Gibson of the work performed on his behalf. To the extent that von Bernuth acquiesced in this course of conduct and the lack of communication alleged to have occurred between Gibson and von Bernuth, von Bernuth was bound by the choice of counsel and the actions taken or not taken on his behalf does not form a basis to relieve von Bernuth of the default judgment. After reasonable investigation, WRS is unable to determine the truth of the averments contained in Paragraph 25 as to von Bernuth's attitude towards paying his obligation to Gibson or his share of the accountant's fee, except to the extent that it is WRS' counsel's recollection that Gibson represented that von Bernuth had chosen not to pay his share of the accountant's fee pursuant to the Stipulation.

26. Admitted in part and denied in part. WRS admits the allegation that the email notified von Bernuth of the entry of the judgment. After reasonable investigation,

WRS is unable to determine the truth of the averments contained in Paragraph 26 that, that was the first time von Bernuth learned of the entry of the judgment. Said averment is, therefore, denied.

27. Denied. After reasonable investigation, WRS is unable to determine the truth of the averments contained in Paragraph 27 as to von Bernuth's retention of counsel. To the extent that the averment is intended to suggest that von Bernuth acted within a reasonable time in moving forward to request his Motion for Reconsideration or Relief from Judgment, said averment is specifically denied. Rather, WRS submits that the unexplained delay from May 21, 2007 to October 16, 2007 demonstrates as a matter of law that von Bernuth failed to move within a reasonable time to file the Motion for Relief from Judgment based upon Rule 60(b)(6).

28. Denied. The averments contained in Paragraph 28 are specifically denied since they are based upon facts that WRS has previously denied. To the extent that von Bernuth has alleged that he chose Gibson as his counsel and acquiesced in the lack of communication in their relationship, von Bernuth is responsible for the conduct and his choice of counsel and no exceptional circumstances have occurred, which would permit the Court to grant the relief under F.R.C.P. 60(b) or, for that matter, under any other section of Rule 60(b).

29. Admitted in part and denied in part. WRS admits that Gibson states as quoted in Paragraph 29 in his Affidavit. WRS is unable to determine the truth of those statements or the remaining averments contained in Paragraph 29. Said averments are, therefore, denied. Furthermore, WRS incorporates its Response to Gibson's Affidavit as if fully set forth.

30. Denied. The averments contained in Paragraph 30 are specifically denied since WRS does not admit that Gibson has engaged in conduct that is "neglect of duty" as alleged or "abandonment" of his client since said averments are based upon facts, which are denied by WRS. Furthermore, WRS avers that von Bernuth to the extent that he acquiesced in his lack of communication and faithfully paid the invoices submitted to him by Gibson for his services based on an hourly basis, WRS avers that von Bernuth chose Gibson as his counsel and acquiesced in his performance of his duties, in particular his decision not to have his client participate in the payment of the fees for the accountant as von Bernuth had agreed and, therefore, neither exceptional circumstances nor excusable neglect have been demonstrated.

32. Denied. The averments contained in Paragraph 32 are specifically denied. WRS submits that von Bernuth does not have any meritorious defense to the claims made against him by WRS. WRS incorporates by reference thereto documents filed at Document Nos. 88, 89, and 90, constituting its Motion for Summary Judgment, Brief in Support of Motion for Summary Judgment, and Statement of Facts in support of Motion for Summary Judgment. Furthermore, WRS refers to the Responses filed to the Gibson and Parkinson Affidavit submitted on behalf of WRS, Inc. rebutting the contentions contained in the Gibson and Parkinson Affidavit. By reason therefore, opening the default judgment at this time and requiring WRS to proceed to trial on the issues adjudicated by the default judgment will be prejudicial to WRS. WRS at the commencement of this case was a company that employed over 350 people. In May of 2006, WRS was evicted from the facility at which it maintained most, if not all, of its records, but for those records that are in the possession, or continue to be in the

possession of Attorney Reilly. Furthermore, all of the employees of WRS except for Jack Napor and his wife, Louise Napor, are no longer employed by WRS, Inc. and over the past six to seven years during which this litigation has progressed have moved onto other business and other jobs. Based upon the absence of participation by Gibson and the passage of time, WRS respectfully submits that it will be prejudiced if the judgment against von Bernuth is stricken.

WHEREFORE, WRS respectfully requests that the Court deny the relief requested by Charles von Bernuth.

Respectfully submitted,

THOMAS E. REILLY, P.C.

BY: ______/s/ Thomas E. Reilly______

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CERTIFICATE OF SERVICE

I, Thomas E. Reilly, Esquire, hereby certify that a true and correct copy of WRS' Response to Motion for Reconsideration or for Relief from Judgment was delivered via first-class mail, postage pre-paid on the 2nd day of November, 2007, to the following:

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THOMAS E. REILLY, P.C.

BY: ____/s/ Thomas E. Reilly______
Thomas E. Reilly, Esquire